

REMARKS/ARGUMENTS

Claims 1-4, 6, 8-13 and 23 remain in this application. Claims 5, 7 and 14-22 have been canceled in a previous amendment. Claim 3 is canceled and claim 1 is amended as a result of this response and amendment.

Applicant thanks the Examiner for providing the initialed form PTO-1449. However, one reference provided by Applicant on the form PTO-1449, the reference of Conway in the section entitled Other Documents, has not been initialed. Applicant respectfully requests that the Examiner consider and initial this reference.

Rejections Under 35 U.S.C. § 112

Claims 4, 6, 8-13 and 23 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant hereby submits a Statement of Applicant's Agent of Record Regarding Availability of Deposit Pursuant to the Budapest Treaty, Receipt of Deposit and Recorded Assignment evidencing the deposit of bacterial strain KE01 with the American Type Culture Collection by the inventor of the instant application.

Therefore, Applicant respectfully asserts that the rejection under 35 U.S.C. §112, first paragraph of claims 4, 6, 8-13 and 23 has been overcome and requests that this rejection be withdrawn.

Rejections Under 35 U.S.C. §102

Claims 1-3 are rejected under 35 U.S.C. § 102(e) as being anticipated by Reid et al. (US Patent No. 6,613,549), as cited by the Examiner in PTO-892.

The Examiner has asserted that "Reid et al. teach Lactobacillus casei contained in a probiotic and olive oil contained in probiotic too, see column 5, line 13 and 67" on page 6 of the Office Action of December 23, 2005. Applicant has amended claim 1 to

incorporate the limitations of claim 3 and removed the limitation "olive oil" from the amended claim. Claim 3 has been cancelled.

Applicant asserts that amended independent claim 1, and therefore dependent claim 2, is not anticipated by Reid et al. and respectfully request that the rejection of claims 1-3 under 35 U.S.C. § 102(e) be withdrawn.

Rejections Under 35 U.S.C. §101 – Double Patenting

Claims 1-4, 6, 8-13 and 23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,797,266.

A terminal disclaimer in compliance with 37 CFR §1.321(c) is hereby submitted to overcome the nonstatutory double patenting rejection over claims 1-27 of U.S. Patent No. 6,797,266.

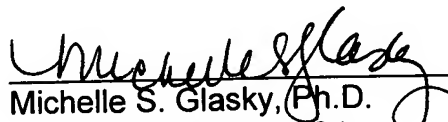
Conclusion

Applicant believes that currently pending claims 1, 2, 4, 6, 8-13 and 23 are patentable and respectfully requests that a timely Notice of Allowance be issued in this case.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-3207.

Respectfully submitted,

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